

REMARKS

Applicant has carefully studied the Final Office Action of January 27, 2005, and offers the following remarks in response thereto.

Claims 1-8, 12, 13, 16-23, 27, 28, and 31-38 were rejected under 35 U.S.C. § 102(e) as being anticipated by Abrol et al. (hereinafter "Abrol"). Applicant respectfully traverses. For the Patent Office to prove anticipation, the Patent Office must show where each and every claim element is present within the reference. Further, the elements of the reference must be arranged as claimed. MPEP § 2131.

Applicant previously pointed out that claim 1 recites creating a packet through an application, and argued that Abrol does not teach this element. The Patent Office in its Response to Arguments section of the Office Action of January 27, 2005 responds by stating that Applicant has failed "to consider the teaching of the Abrol's reference for passing the received IP packets to transport layer based on the information in the IP packets header, wherein indicates the destination port number [col. 5, lines 18-27]." The Patent Office goes on to state "Abrol discloses the step of handling those IP packets lack destination information, but Abrol also points out this only happened in certain situations. It is not right to conclude that all of those received packets in Abrol's system do not include header information." This response misses the import of Applicant's claim language and arguments.

Claim 1 clearly recites "creating a packet through an application, the packet being a self-contained, independent entity of data including header information for routing the packet. . . ." Thus, the application of claim 1 creates the header information for routing. Abrol does not teach this element. The relevant passage of Abrol is found at Abrol col. 5, lines 48-60, which states that application 260 may transmit raw packetized data. Abrol then states that the communication protocol stack 280 (not the application, as recited in the claims) encapsulates the packetized or raw data. Thus, Abrol clearly does not teach that the application 260 creates a packet with the header information as recited in claim 1.

The Patent Office's citation to Abrol, col. 5, lines 18-27 does not teach the recited claim element because Abrol, col. 5, lines 18-27 deals with the reception and processing of incoming packets, not how the application 260 creates and sends packets. Thus, the portion of Abrol cited by the Patent Office to refute Applicant's arguments does not teach or suggest the actual claim language.

Since Abrol does not teach the application creating the packet with the header information as recited in claim 1, Abrol does not anticipate claim 1, and claim 1 is allowable. Claims 2-8, 12, and 13 depend from claim 1, and are not anticipated at least for the same reasons. Applicant requests withdrawal of the § 102 rejection for claims 1-8, 12, and 13 for this reason.

Independent claims 16, 31, and 32 all recite similar elements. For example, claim 16 recites "create a packet through an application, the packet being a self-contained, independent entity of data including header information. . . ." Claim 31 recites "means for creating a packet through an application, the packet being a self-contained, independent entity of data including header information. . . ." Claim 32 recites "create a packet through an application, the packet being a self-contained, independent entity of data including header information for routing the packet" As explained above, Abrol does not teach or suggest that the application creates the packet with the header as recited in the claims. Thus, Abrol does not anticipate claims 16, 31, or 32. Claims 17-23, 27, 28, and 33-38 depend from claims which are not anticipated, and claims 17-23, 27, 28, and 33-38 are not anticipated at least for the same reason. Applicant requests withdrawal of the § 102 rejection of claims 16-23, 27, 28, and 31-38 at this time.

Claims 14, 15, 29, and 30 were rejected under 35 U.S.C. § 103 as being unpatentable over Abrol in view of Gigliotti et al. (hereinafter "Gigliotti"). Applicant respectfully traverses. For the Patent Office to combine references in an obviousness determination, the Patent Office must do two things. First, the Patent Office must articulate a motivation to combine the references, and second, the Patent Office must support the articulated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). The range of sources from which the evidence may come does not diminish the requirement for actual evidence. *Id.* Once the references are properly combined, the combination must still teach or suggest every element of the claims. MPEP § 2143.03.

Applicant initially traverses the rejection on the basis that the Patent Office has not properly supported the motivation to combine the references. Specifically, the Patent Office opines that the motivation to combine the references is "based on specific design reason." This asserted motivation lacks the requisite actual evidence in support thereof. Thus, even though JAVA is allegedly a well-known object-oriented language, there is no evidence that anyone skilled in the art would use JAVA to implement the function of the claimed invention. Without the requisite evidence, the motivation is improper. Since the motivation is improper, the

combination is improper. Since the combination is improper, the rejection is not proper, and claims 14, 15, 29, and 30 are allowable for this reason.

Applicant further traverses the rejection because the combination, even if proper (a point which Applicant does not concede), does not teach or suggest all the claim elements. As argued above, Abrol does not teach the application creating the packet with header information as recited in the independent claims. Nothing in Gigliotti cures the deficiencies of Abrol. Thus, since the references individually do not teach or suggest the claim element, the combination of references cannot teach or suggest the claim element. Since the combination does not teach or suggest the claim element, the combination does not establish obviousness. Since the combination does not establish obviousness, the claims are allowable for this reason as well.

Applicant requests withdrawal of the § 103 rejection of claims 14, 15, 29, and 30 for these reasons.

Applicant requests reconsideration of the rejections in light of the remarks presented herein. The references of record do not teach or suggest the application creating the packet with the header information. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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